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In The
Supreme Court of the United States
October Term, 1991

DAVID E. RIGGINS,

Petitioner,

v.

STATE OF NEVADA,

Respondent.

On Writ Of Certiorari To The
Supreme Court Of The State Of Nevada

REPLY BRIEF FOR PETITIONER

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Only two points in the Brief for Respondent ("Resp. Br.") and the Brief Amicus Curiae of the State of Louisiana Supporting Respondent call for supplementation of the Brief for Petitioner.

I.

THE FORCIBLE ADMINISTRATION OF ANTIPSYCHOTIC
DRUGS TO RIGGINS DURING HIS TRIAL VIOLATED HIS
RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH AND
FOURTEENTH AMENDMENTS

Despite the suggestions of respondent and its amicus, this case is not about whether a state may ever "treat incompetent defendants with antipsychotic medication in order to achieve and maintain competency to stand trial." Brief Amicus Curiae of the State of Louisiana Supporting Respondent at 1; see Resp. Br. at 14-15. The issue is far narrower: it is whether a state may forcibly medicate a competent defendant on the claim that the medication is necessary to maintain the defendant's competency to stand trial (1) when there is virtually no evidence that the defendant would become incompetent without the medication and (2) when the defendant's unmedicated demeanor is material evidence -- indeed, perhaps the best evidence he has -- in support of his only defense -- that he was insane at the time of the crime. This case raises also the related question whether a state may forcibly medicate a competent defendant during the sentencing phase of a capital case on

the ground that it is necessary to maintain the defendant's competency, (1) when there is virtually no evidence that the defendant would become incompetent without the medication and (2) when the primary mitigating factors he seeks to demonstrate are that he suffers from a severe mental illness and feels grief and remorse for his actions.

Courts have universally recognized that the defendant's courtroom demeanor has probative value when sanity is at issue. See, e.g., Commonwealth v. Louraine, 390 Mass. 28, 453 N.E.2d 437, 442 (1983); State v. Hayes, 118 N.H. 458, 389 A.2d 1379, 1381-82 (1978); In re Pray, 133 Vt. 253, 336 A.2d 174, 176-77 (1975); see also 4 Wigmore on Evidence § 1160 (rev. ed. 1972). Even the Nevada Supreme Court acknowledged this. (J.A. 54). And when a defendant who has asserted the insanity defense takes the witness stand, as Riggins did, his demeanor is not only relevant to the credibility of his testimony, it is a material portion of his testimony.

Respondent itself recognizes that antipsychotic drugs "suppress a person emotionally," and "render[] a person rational . . . and logical." (Resp. Br. at 17); they make a mentally disturbed person appear calm, impassive, and sane. Forcibly medicating an insanity defendant with antipsychotic drugs, therefore, violates his right to present his defense. See Rock v. Arkansas, 483 U.S. 44, 52 (1987).

Respondent contends that Riggins' right to present a defense was not infringed because "several expert psychiatric witnesses testified about the effects of Mellaril on Defendant's demeanor." Resp. Br. at 28. But, as Justice Springer of the Nevada Supreme Court recognized in his dissent, such testimony does not "approach the insight a jury is afforded by the opportunity to see and hear the defendant, as is." (J.A. 67 (emphasis in original)); accord Commonwealth v. Louraine, 453 N.E.2d at 442; see also Brief Amicus Curiae of the Coalition for the Fundamental Rights of Equality of Ex-Patients at 26. Moreover, Riggins and his attorney had the right to decide how best to present Riggins' defense. The compelled medication unconstitutionally interfered with their decision that presenting an unmedicated Riggins to the jury was the best way to support Riggins' insanity defense and the best way to defend against the imposition of the death penalty. See Geders v. United States, 425 U.S. 80 (1976); Brooks v. Tennessee, 406 U.S. 605 (1972); Ferguson v. Georgia, 365 U.S. 570 (1961).

As the American Psychiatric Association notes in its brief amicus curiae, antipsychotic drugs can also make a defendant look "so calm or sedated as to appear bored, cold, unfeeling, and unresponsive." Brief Amicus Curiae of the APA at 13. Thus, forced medication also violates an

insanity defendant's Fifth Amendment right not to be compelled to be a witness against himself as well as his right to a fair trial. See Pet. Br. 16-18.

II.

THERE WAS VIRTUALLY NO EVIDENCE THAT RIGGINS WOULD HAVE BECOME INCOMPETENT WITHOUT MEDICATION

What is especially striking in this case is that the only interest advanced by respondent to justify medicating Riggins was the need to maintain Riggins' competency to stand trial,¹ yet scarcely any evidence

¹ At the hearing on Riggins' motion to terminate the medication, respondent's only justification for continuing the medication was "that medication in this case is required in order to continue the defendant's competency." (R. 497). This also was the only interest advanced by respondent in its brief in opposition to Riggins' motion to terminate medication (J.A. 26-40), in its brief to the Nevada Supreme Court and in its opposition to Riggins' Petition for Writ of Certiorari.

For the reasons stated in Brief for Petitioner at 20-21, respondent's concern that an unmedicated Riggins might "fake a psychosis" (R. 498-99) was an insubstantial interest, as was respondent's concern that delay might result if Riggins did become incompetent without medication (R. 499). At the time of the hearing trial was more than ten weeks away (see Resp. Br. at 19-20), but, because the trial court granted a continuance (see Resp. Br. at 20) due to a scheduling conflict of petitioner's attorney, the trial did not actually begin until more than sixteen weeks after the hearing. It probably would have taken less than ten weeks to see if Riggins became incompetent without medication and, if he did, to restore his competency. (R. 417-19, 485).

(continued...)

suggested that Riggins would have become incompetent without medication. As respondent acknowledges (Resp. Br. at 5-10), none of the three psychiatrists who testified at the hearing on Riggins' motion to terminate the administration of medication ever found Riggins to be incompetent, and none believed that ceasing the medication would likely or probably cause Riggins to become incompetent. To the contrary, Dr. Quass testified that Riggins would be competent without medication. (R. 443). Dr. Master testified that, while there was a "possibility" that Riggins would become incompetent without the medication, there was no real likelihood of this happening. (R. 414-15). And Dr. O'Gorman was unable to render an opinion whether Riggins would become incompetent without medication (R. 485).

A fourth psychiatrist, Dr. Jack A. Jurasky, had evaluated Riggins for competency but did not testify at the hearing on Riggins' motion. Although the trial court's order denying Riggins' motion (J.A. 49) does not indicate whether the judge even considered the reports prepared by

¹/ (...continued)

In the Brief for Respondent, respondent, for the first time, asserts that "the well-being of the Petitioner and the safety of others was [also] of concern to the court." Resp. Br. at 19. This argument is disingenuous. Not only has respondent never before asserted this interest but, as the APA observes, the record "can hardly compel a finding that the medication was necessary to serve the State's (unasserted) treatment and institutional interests." Brief Amicus Curiae of the APA at 22 (parenthesis in original).

Dr. Jurasky (J.A. 11-12, 18-19), these reports do not suggest that medication was necessary to maintain Riggins' competency to stand trial. Dr. Jurasky did not believe that Riggins would become incompetent without medication, he believed Riggins was incompetent even while receiving medication. Id.

Accordingly, even if a State's interest in ensuring a defendant's competency to stand trial outweighs the Fifth, Sixth, Eighth and Fourteenth Amendment rights that petitioner submits are infringed by the forced medication of an insanity defendant, respondent failed to show that forcing Riggins to ingest any antipsychotic drugs during his trial -- let alone the heavy dosage of 800 milligrams of Mellaril per day (see R. 415, 473, 752) -- was necessary to maintain Riggins' competency.

CONCLUSION

The judgment of the Supreme Court of Nevada should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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